



Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead



Richard J. Bruckner
Director

February 10, 2011

TO: Pat Modugno, Chair
Esther L. Valadez, Vice Chair
Leslie G. Bellamy, Commissioner
Harold V. Helsley, Commissioner
Curt Pedersen, Commissioner

FROM: **Connie Chung, AICP, Supervising Regional Planner
Housing/General Plan Section**

SUBJECT: **February 23, 2011 – AGENDA ITEM # 5
PROJECT NO. R2010-00416
ADVANCE PLANNING CASE NO. T2010-000017
ENVIRONMENTAL ASSESSMENT NO. T201100009
AMENDMENT TO TITLE 21 (SUBDIVISION) AND TITLE 22 (PLANNING
AND ZONING) OF THE LOS ANGELES COUNTY CODE RELATED TO
REASONABLE ACCOMMODATION**

SUMMARY

At the public hearing before your Commission on February 23, 2011, staff will discuss the Draft Reasonable Accommodation Ordinance **[Attachment 1]**, which implements a program of the 2008-2014 Los Angeles County Housing Element of the General Plan by amending Title 21 and Title 22 of the Los Angeles County Code. The proposed ordinance creates an administrative procedure for individuals with disabilities to request reasonable accommodation from land use and zoning standards or procedures, when those standards or procedures are a barrier to equal housing access. The proposed ordinance applies to all the unincorporated areas of Los Angeles County, and to all regulations, policies, practices and procedures regulated by the Department of Regional Planning (Department). It should be noted that the proposed ordinance before your commission has been modified since the public release on January 24, 2011. Please see page 10 for more information on these minor changes.

Reasonable accommodation means a waiver or modification to regulations, policies, procedures and standards that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a residential use. State and federal fair housing laws require that cities and counties provide this flexibility where the requested accommodation is reasonable and necessary under the law. Some examples include permitting a wheelchair ramp in a required setback area or allowing extra time for applicant to submit materials. The proposed ordinance provides a fair and reasonable means of accommodating the special housing needs of individuals with disabilities, without compromising the County's commitment to protecting community character and environmental quality.

BACKGROUND

The Los Angeles County Housing Element was adopted by the Board of Supervisors in 2008. The Housing Element contains policies and programs to implement federal and state fair housing laws and to meet the housing needs of all residents of the County, including those with disabilities. The specific Housing Element program implemented by this ordinance is Program 2: Removal of Governmental Constraints, which commits the County to addressing rules and regulations that may constrain the development of housing affordable to low and moderate income households and households with special needs. Listed under the program are eight (8) revisions to the zoning ordinance, including, "Prepare reasonable accommodation policy and procedure by 2009."

The proposed ordinance follows a series of federal and state laws that have been enacted over the past several decades to prohibit housing discrimination against individuals with disabilities. Both the Federal Fair Housing Amendments Act of 1988 (FHAA) and the California Fair Employment and Housing Act (FEHA) define discrimination as, among other things, a refusal to make reasonable accommodations in rules, policies, practices, or services, when these accommodations may be necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling.

Subsequent legislation expands upon the intent of the fair housing laws. The state Housing Element law (65583(c)(3)) requires local housing elements to include programs that "provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities." The U.S. Department of Housing and Urban Development's (HUD)'s requirement that jurisdictions utilizing Community Development Block Grant (CDBG) funds analyze impediments to fair housing; the County's "Analysis of Impediments to Fair Housing Choice" includes the recommendation that a procedure for reasonable accommodation be adopted. Furthermore, in May 2001, the State Attorney General issued a letter to

local governments advising of their affirmative duty under fair housing laws to provide reasonable accommodation and encouraging local governments to establish prompt and efficient processes for handling such requests [**Attachment 2**].

PROPOSED ORDINANCE

Reasonable Accommodation Procedure

The proposed ordinance creates an administrative procedure in Title 22 in which the director makes a determination for a reasonable accommodation request on a case-by-case basis. When a reasonable accommodation is requested in conjunction with a discretionary land use action before the Hearing Officer, the Regional Planning Commission or the Board of Supervisors, the reasonable accommodation request is reviewed concurrently with the discretionary land use action.

The reasonable accommodation procedure also applies to Title 21 for cases in which the director or advisory agency reviews a request for reasonable accommodation in conjunction with a subdivision.

Applicability

The proposed ordinance applies to all the unincorporated areas of Los Angeles County. An accommodation may be requested in any zone, when the request is in conjunction with a residential use. The proposed ordinance applies to all regulations, policies, practices and procedures regulated by the Department of Regional Planning.

A reasonable accommodation may be requested by a person with a disability or someone acting on his or her behalf, such as a personal advocate, or a provider or developer of housing for individuals with disabilities.

Definitions

The proposed ordinance adds the following definitions to Title 22:

Disability: The proposed ordinance redefines *disability* in Title 22 to be consistent with the definition in state law. An individual with a disability has a physical or mental impairment that limits a major life activity; has a record of such impairment; or is regarded as having such impairment. In this definition:

“Physical and mental impairment” includes, but is not limited to: medical conditions such as cancer, genetic characteristics, emotional or mental illness,

disfigurement, learning disabilities, HIV or AIDS, among many other diseases and health impairments, regardless of whether they are chronic, recurring, asymptomatic or treatable. Also included in the definition are individuals in recovery from substance abuse, but not individuals currently engaging in the unlawful use of drugs;

“Major life activity” includes, but is not limited to: seeing, hearing, sleeping, working, walking, caring for oneself and other activities of daily living;

“Limits” means that it makes the activity difficult.

Reasonable accommodation: A waiver or modification to regulations, policies, procedures and standards that may be reasonable and necessary for a person with a disability to have equal opportunity to use and enjoy a residential use.

Residential use: Refers to the definition of “dwelling” contained in the FHAA, which defines “dwelling” as any housing, including single-family homes, apartments, mobile homes, residential facilities, single room occupancy housing or other living quarters, and vacant land planned for residential development.

Findings for Reasonable Accommodation

State and federal law dictate the findings for a reasonable accommodation procedure. Because reasonable accommodation is based upon the specific needs of an individual, the procedure differs from other procedures to waive or modify zoning or land use standards.

The findings, as outlined in the ordinance, are:

1. That the accommodation requested is intended to be used by an individual with a disability who resides or will reside on the subject property;
2. That the requested accommodation is necessary to afford an individual with a disability equal opportunity to use and enjoy a residential use;
3. That the requested accommodation will not impose an undue financial or administrative burden on the County; and
4. That the requested accommodation will not require a fundamental alteration in the nature of the land use and zoning program of the County.

Necessary Finding

The first two findings relate to the necessity of the accommodation. As proposed in the draft ordinance, the director determines that the accommodation is intended for a person(s) who has a disability as defined in the law and verified by an appropriate third party. Sources of verification include, but are not limited to, disabled placards from the California Department of Motor Vehicles or a letter from a medical provider. In the case of a provider or developer of housing for individuals with disabilities, the applicant would provide a service contract or funding agreement that commits the developer to building housing for a specific disabled population.

Second, the applicant establishes that, but for the accommodation, the applicant likely would be denied an equal opportunity to use or enjoy housing. In essence, there has to be a causal link or nexus between the requested accommodation and the disability. An example of a necessary finding is a letter from a physician noting that a mobility impaired applicant cannot climb stairs, and therefore needs to install a wheelchair ramp to access her home.

Reasonable Finding

The next two findings relate to the reasonableness of the request for accommodation. The director may determine that a request is “reasonable,” and grant the requested accommodation, unless the director finds that granting the request would be an undue financial or administrative burden to the County or would result in a fundamental alteration to the County’s land use and zoning programs.

An “undue financial or administrative burden” imposes significant and identifiable costs to the County, or requires the Department to participate in activities that are not normally part of its work program. Concrete evidence should support this finding, and consideration should be given to the entire resources of the County.

A “fundamental alteration” means that the accommodation would undermine the purpose of the zoning code or conflict with the Department’s mission. A fundamental alteration would frustrate such goals as maintaining the character of our neighborhoods, protecting the natural environment, and ensuring health, safety and welfare. For example, the establishment of a fifty (50)-bed nursing home in a zone that only permits single-family homes may be considered a fundamental alteration because the accommodation is so far reaching that it undermines the purpose of maintaining neighborhood character.

Decision and Appeal

The director prepares a written decision, including the findings for reasonable accommodation, within thirty (30) days of receiving all necessary materials. A notice of the decision on a reasonable accommodation is delivered to the applicant, as well as to the abutting neighbors. Any aggrieved person may appeal the decision. The appeal is limited to the findings for reasonable accommodation. Decisions of the director and Hearing Officer are appealable to the Regional Planning Commission. Decisions of the Regional Planning Commission are appealable to the Board of Supervisors.

Recordation

After a reasonable accommodation has been granted, an applicant is required to record the findings of reasonable accommodation with the County Recorder's office. This requirement ensures that the accommodation is tied to the person(s) for whom it was granted, and that future property owners are notified of any accommodation associated with the property. Unless the director finds that the modification is physically integrated into the property and cannot feasibly be removed or altered, or the new property owner applies for and is granted the same accommodation, the new property owner is required to bring the property into compliance with applicable zoning regulations.

ANALYSIS

Ordinance

Although the state and federal fair housing laws do not require local governments to adopt an ordinance in order to provide reasonable accommodations, the County is taking an affirmative step to ensure that those who need reasonable accommodation are aware of the ability to seek and obtain such requests. In his 2001 letter, then Attorney General Bill Lockyer encouraged local jurisdictions not to use existing variance or conditional use permit processes because they do not provide the correct standard for making fair housing determinations and because the public process used in making entitlement determinations fosters opposition to much needed housing for individuals with disabilities. The adoption of an ordinance will provide a clear procedure for staff and the public to follow.

Case-by-Case Nature of Reasonable Accommodations

By law, reasonable accommodation requests must be reviewed on a case-by-case basis. Accordingly, it is impossible for the Department to identify and foresee an

exhaustive scope of each possible request for accommodation. However, the majority of past requests have sought modifications to residential development standards to permit physical access to single-family homes, such as installation of wheelchair ramps and elevators.

Privacy

Because a disability is a medical condition, privacy laws require the County to treat information about a person's disability discretely. Information that identifies a person by name and reveals his or her particular disability should be omitted from the public record.

Enforcement

While a reasonable accommodation may be requested for any rule, policy, practice or procedure, those that do not meet each of the findings delineated in the ordinance would be denied. The recordation compels the new property owners to bring the property into compliance with applicable zoning regulations, and ensures non-compliant properties could be subject to enforcement procedures if the accommodation is no longer associated with a current resident.

Accessible and Interactive Process

The process to request a reasonable accommodation would be accessible and interactive between the Department and the applicant. The Department would help individuals who need assistance in requesting an accommodation, by providing appropriate auxiliary aids and services where necessary, such as materials in larger print, or reading and explaining the application form.

In making a determination, the director may gather additional information as necessary, and may also consider alternative accommodations that may provide an equivalent level of benefit to that which has been requested. Any alternative accommodation must be mutually agreed-upon by the director and the person requesting accommodation.

Fees

A new application procedure for the Department of Regional Planning would require staff time and training. However, charging a fee for a reasonable accommodation application is inconsistent with federal and state fair housing law. Because the Department is otherwise legally obligated to make reasonable accommodations, and as

the establishment of a formal procedure does not generally induce the number of reasonable accommodation requests, this procedure will not likely cause fiscal impacts to the County. In fact, a uniform, systematic procedure may ultimately have a net benefit on staff resources.

OUTREACH AND PREPARATION

In preparation of the proposed ordinance, staff conducted outreach to major stakeholders. Staff organized three workshops with disability advocates, developers of special needs housing, fair housing professionals, County staff and other interested persons. Through these meetings, staff gained insight into how to make the procedure accessible, and what types of accommodations may be expected. For more information on these meetings, please see the meeting summaries **[Attachment 3]**. In addition, staff presented the procedure in concept to the Los Angeles County Commission on Disability and the California Community Care Licensing Division.

To gain an understanding of the legal and policy context of reasonable accommodation, staff compiled research on fair housing and reasonable accommodation statutes and case law, as well as best practices of other local jurisdictions. Many local jurisdictions in the state have adopted such measures, including the cities of Los Angeles, Long Beach, Glendale and San Jose. Staff has completed a comparative analysis of other local jurisdictions' procedures **[Attachment 4]**. For a comprehensive summary of the County's fair housing responsibilities, see the draft Department of Regional Planning's *Fair Housing and Anti-Discrimination Guidelines* **[Attachment 5]**.

Collaboration within the Department and with the Office of County Counsel will inform the implementation of the proposed ordinance. To facilitate the review of requests for reasonable accommodation, staff prepared sample application materials **[Attachment 6]**. Currently, staff is developing internal Guidelines for staff, and, upon adoption, staff intends to initiate Department training on how to process requests for reasonable accommodation. Coordination with other County departments involved in the development review process, such as Department of Public Works and Fire Department, will be important in implementation to ensure consistency in procedures.

ENVIRONMENTAL DOCUMENTATION

Staff has prepared a Draft Initial Study and Negative Declaration **[Attachment 7]** for the proposed ordinance in compliance with the California Environmental Quality Act (CEQA) and the Environmental Document Reporting Procedures and Guidelines of the

County of Los Angeles. Staff consulted on the initial study with the County Department of Public Works, Department of Public Health, Fire Department, Sheriff's Department, the State Housing and Community Development Department, and the State of California Office of Planning and Research.

PUBLIC NOTIFICATION

A 1/8 page legal advertisement was published in the following newspapers of general circulation, on or before January 24, 2011: Acton Agua Dulce Weekly News, Antelope Valley Press, Daily News, Inland Valley Daily Bulletin, La Opinion, Pasadena Star News, Press Telegram, San Gabriel Valley Tribune, The Argonaut, The Daily Breeze, The Signal Newspaper, Whittier Daily News. Case-related materials were distributed to all County libraries on January 20, 2011, and posted on the Department of Regional Planning's web site, <http://planning.lacounty.gov/case>. Staff mailed 3,177 notices to interested persons and organizations, including town councils and homeowners' associations.

GENERAL PLAN CONSISTENCY

The Draft Reasonable Accommodation Ordinance is in conformance with the purpose, intent and provisions of the Los Angeles County General Plan. Specifically, the proposed ordinance supports the following goals and policies:

Housing Element, Housing Availability, Goal 1: A wide range of housing types in sufficient supply to meet the needs of current and future residents, particularly persons with special needs, including but not limited to low income households, seniors, persons with disabilities, single-parent households, the homeless and at-risk homeless, and farmworkers.

Housing Element, Housing Affordability, Goal 4: A housing delivery system that provides assistance to those with low and moderate incomes and those with special needs.

Housing Element, Equal Opportunity, Goal 1: Accessibility to adequate housing for all persons without discrimination in accordance with federal and state fair housing laws.

General Plan, General Policies, Human Resources Development, Goal 1: Eradicate discrimination in housing, jobs and income, education, recreation, and

other facets of living; and guarantee equal opportunity in order to promote individual and group development.

General Plan, General Policies, Human Resources Development, Goal 3: Maximize individual and family self-support and reduce the need for institutional treatment of needy, disabled, and handicapped people by providing adequate services and facilities in the community.

General Plan, General Policies, Housing and Community Development, Goal 46: Promote open and free choice of housing for all.

PROPOSED ORDINANCE REVISIONS

Since the public release of the proposed ordinance on January 24, 2011, staff has made minor changes to the ordinance. Four (4) non-substantive changes were made; please see the tracked changes version of the public review draft **[Attachment 8]**. In addition, as a result of discussions with stakeholders, the ordinance now includes a clause to specify that providers and developers of housing for individuals with disabilities may request reasonable accommodation. Indeed, this is the intent of the ordinance, as authorized by fair housing laws; however, adding this clause provides additional clarity. Please see the change below:

Previous:

22.56.3030 Application—Filing.

A. Any individual with a disability, or someone acting on his or her behalf, desiring to obtain accommodation in accordance with this Part 19 shall file an application with the director.

Current:

22.56.3030 Application—Filing.

A. Any individual with a disability, ~~or~~ someone acting on his or her behalf, **or a provider or developer of housing for individuals with disabilities**, desiring to obtain accommodation in accordance with this Part 19 shall file an application with the director.

STAFF RECOMMENDATION

Staff recommends that the Regional Planning Commission approve the proposed ordinance as revised and presented today for recommendation to the Board of Supervisors ("Board") for its consideration and approval and direct staff to transmit the

proposed ordinance to the Board for their consideration at a public hearing, by approving a resolution to that effect in the form of the attached draft resolution.
[Attachment 9]

RECOMMENDED MOTION

I move that the Regional Planning Commission close the public hearing and find that the Negative Declaration reflects the independent judgment and analysis of the County, and approve the resolution recommending that the Board of Supervisors hold a public hearing to consider and adopt the Negative Declaration and find that the proposed ordinance, as revised and presented today, will not have a significant effect on the environment.

I also move that the Regional Planning Commission approve the resolution recommending that the Board of Supervisors hold a public hearing to consider and adopt the proposed ordinance as revised and presented today, and determine that it is compatible with and supports the goals and policies of the Los Angeles County General Plan.

Please find attached the ordinance, resolution, environmental documentation and map. Should you have any questions, please contact Gretchen Siemers at (213) 974-6417 or gsiemers@planning.lacounty.gov.

Attachments:

1. Draft Reasonable Accommodation Ordinance; January 19, 2011
2. Letter from Attorney General Bill Lockyer, May 2001
3. Focus Group Meeting Summaries; 2009
4. Comparison of other local jurisdictions' procedures
5. Draft Department of Regional Planning Fair Housing and Anti-Discrimination Guidelines; January 19, 2011
6. Sample Reasonable Accommodation Application Materials; 2010
7. Draft Initial Study and Negative Declaration; January 19, 2011
8. Tracked Changes Version of Public Release Draft, February 10, 2011
9. Draft Resolution